
**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON DIVISION**

ERNEST LEE DEAN

Civil Case No. 2:19-cv-02050-JR

Plaintiff(s)

v.

SNAKE RIVER CORRECTIONAL INSTITUTION et, al
OREGON DEPARTMENT OF CORRECTIONS et,al
DRAVIS, RUTHVEN, SMITH, GULICK, HEMPHILL,
KOLTES, CLEMENTS, DIGIULIO, CAIN, PETERS

Defendant(s)

PRISONER CIVIL RIGHTS COMPLAINT

42 U.S.C. 1983

Jury Trial Demanded

**Verified Complaint for Damages, Declaration,
And Injunction Relief**

Introduction

I

1. This is a 1983 action filed by Plaintiff, Ernest Lee Dean, a state prisoner, for damages and injunctive relief under 42 U.S.C. 1983, alleging: Municipal Liability, and Supervisory Liability for Deliberate Indifference, for lack of Ameliorative Mental Health Care, and that Plaintiffs Condition of Confinement, violated the Eighth and Fourteenth Amendment to the United States Constitution and that defendants were deliberate indifferent to the conditions.

Jurisdiction

II

2. Jurisdiction of this court is invoked pursuant to 25 U.S.C § 1343 in that this is a civil action arising under the constitution of the United States.
3. Jurisdiction of the court is invoked pursuant to 28 U.S.C. § 1343 (a) (3) in that this Action seeks to redress the deprivation, under color of state law, of rights secured by acts of congress providing for equal rights of persons within the jurisdiction of the United States.
4. Jurisdiction of this court is invoked pursuant to 28.U.S.C. § 1332, where jurisdiction arises under the Constitution of the United States, an Amendment to the constitution and of Congress or treaty of the United States.

Parties

III

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- 4 **5. Plaintiff:** Ernest Lee Dean, at all times relevant was confined by the Oregon
- 5 Department Of Corrections (ODOC) and serving a prison sentence at the at Snake
- 6 River Correctional Institute, residing in Ontario Oregon, in the County of Malheur.
- 7
- 8 **6. Defendant:** Oregon Department of Corrections, herein shall be referred to as Defendant,
- 9 or ODOC, or Prison Officials, is a state government agency, and municipality under the
- 10 laws of the State of Oregon, and sued in its official capacity for violations done pursuant
- 11 to a policy, custom, or practice. ODOC conducts business in the state of Oregon in Salem
- 12 Oregon, in the County of Marion.
- 13
- 14 **7. Defendant:** Colette Peters, is the Director of the Oregon Department of Corrections, and
- 15 acting with Actual Authority for defendant, ODOC. Colette Peters, is employed at the
- 16 Oregon Department of Corrections, in Salem Oregon, in the County of Marion. She is
- 17 sued in her official capacity for Injunction Purposes only.
- 18 **8. Defendant:** Snake River Correctional Institution, herein shall be referred to as SRCI, is a
- 19 local Correctional Institution, and municipality, under the laws of the state of Oregon,
- 20 and sued in its official capacity for violation done pursuant to a policy, custom, or
- 21 practice. SRCI conducts business in the State of Oregon, in Ontario Oregon, in the
- 22 County of Malheur.
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1 **9. Defendant:** Brad Cain, is the Superintendent of the Snake River Correctional Institution,
2 and acting with actual Authority for defendant, SRCI. Brad Cain is employed at Snake
3 River Correctional Institution, in Ontario Oregon. he is sued in his official capacity for
4 Injunction Purposes only.

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6 **10. Defendant:** Dr. Donald Dravis, herein shall be referred to as defendant, Prison officials,
7 is the Chief Psychiatrist and Behavioral Health Service Administrator at ODOC, He is
8 the person responsible for the overall organization and delivery of mental health service
9 to inmates in the State of Oregon. He is employed with the Oregon Department of
10 Correction, and conducting business, in Salem Oregon, in the County of Marion. He is
11 sued in his individual capacity, for supervisory Liability, for Deliberate Indifference.
12 And Official Capacity for Injunction only.

13 **11. Defendant:** Dr. Daryl Ruthven, herein shall be referred to as Defendant, Prison Official,
14 is the Chief Psychiatrist, , and clinical Director at ODOC. He is the person responsible
15 monitoring clinical operations statewide, who reports to the behavioral Health Service
16 Administrator. He is employed with the Oregon Department of Corrections, and
17 conducting business, in Salem Oregon, in the county of Marion. He is sued in his
18 individual capacity, for Supervisory Liability for Deliberate Indifference. And Official
19 Capacity for Injunction purpose only

1 **12. Defendant:** Renae Smith, herein shall be referred to as Defendant, Prison Officials, is the
 2 Clinical Supervisor and Behavioral Health Service Program Manager at SRCI. She is
 3 responsible for Supervising Mental Health Treatment Provided by Mental Health
 4 Specialist to Inmates at SRCI. She is Employed with Snake River Correctional
 5 Institution, and conducting business in Ontario Oregon in the County of Malheur. She is
 6 sued in her individual capacity, for Supervisory Liability For Deliberate Indifference. And
 7 Official Capacity for Injunction purposes only

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 9 **13. Defendant:** Garth Gulick, is the Treating Physician for the Plaintiff, and responsible with
 10 providing medical care to inmates at SRCI. He is a SRCI, TLC-Provider, with the duty of
 11 making medical treatment decisions and referrals reviewed by the Therapeutic Level of
 12 Care Committee, (TLC-Committee) and is directly involved with approving or denying
 13 Plaintiff request for access to outside medical care. He is employed at Snake River
 14 Correctional Institution, (SRCI), and conducting business in Ontario, Oregon, in the
 15 County of Malheur. He is sued in his individual capacity. And Official Capacity for
 16 Injunction purposes only

17 **14. Defendant:** Dr. Brian Hemphill, is a Prison Medical Physician responsible with
 18 providing medical care to Inmates at SRCI. He is a SRCI, TLC-Provider, task with the
 19 duty of making medical treatment decisions and referral reviews by the Therapeutic Level
 20 of Care Committee, (TLC-Committee), and is directly involved with approving or
 21 denying Plaintiff request to access to outside Medical Care. He is employed at Snake
 22 River Correctional Institution, (SRCI), and conducting business in Ontario, Oregon in the
 23 County of Malheur. He is sued in his individual capacity. And Official Capacity for
 24 Injunction purposes only

1 **15. Defendant:** Dr. Lisa Koltes, is a Prison Medical Physician, responsible with providing
2 Medical Care to Inmates at SRCI. She is a SRCI, TLC-Provider, task with the duty of
3 making medical treatment decision and referral reviews by the Therapeutic Level of Care
4 Committee, (TLC-Committee), and is directly involved with approving or denying the
5 Plaintiff request to Outside Medical Care. She is employed at Snake River Correctional
6 Institution, (SRCI), and conducting business in Ontario Oregon in the County of Malheur.
7 She is Sued in her individual capacity. And Official Capacity for Injunction purposes
8 only.

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10 **16. Defendant:** Ashley Clements, is a Prison Nurse Practitioner, responsible, with
11 performing Health Care Duties consistent with Health Evaluation and Screening of
12 Inmates signed up to see a Sick call Nurse, at SRCI. She is a SRCI, TLC-Provider, task
13 with the duty of making medical treatment decisions and referral reviews by the
14 Therapeutic Level of Care Committee (TLC-Committee), and is directly involved with
15 approving or denying the Plaintiff request to Outside care. She is employed at Snake
16 River Correctional Institution, (SRCI) and conducting business in Ontario Oregon, in the
17 County of Malheur. She is sued in her individual capacity. And Official Capacity for
18 Injunction purposes only.

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3 **17. Defendant:** Dr. Christopher Digiulio, is the Health Service Clinical Medical Provider, for
4 the Oregon Department of Corrections, (ODOC), he is task with the duty of authorizing
5 all decisions requiring medical judgment directly affecting a Prisoner Care, at SRCI. He
6 is the SRCI, TLC-Provider, task with the duty of making the final medical treatment
7 decisions and referral reviews Via-Phone, by the Therapeutic Level of Care Committee,
8 (TLC-Committee)and is directly involved with the final approval or denial of the
9 Plaintiffs request to outside care. He is employed at the Oregon Department of
10 Corrections, (ODOC), and conducting business in Ontario Oregon, in the County of
11 Marion. He is Sued in his individual capacity. And Official Capacity for Injunction
12 purposes only.

13 **BACKGROUND**

14 **18.** Plaintiff originally pursued a State Habeas Case alleging conditions of confinement,
15 which was filed in the Oregon Supreme Court in case: Ernest Lee Dean v. Oregon
16 Department of Corrections ex,rel Donald Dravis M.D., case# S066212. The case was sent
17 to Malheur County Circuit Court and dismissed without prejudice by the Oregon
18 Supreme Court on November 27th, 2018. **Attached:** is Copy of Appellate Judgment.

19
20 **19.** Plaintiff refiled the State Habeas corpus for condition of confinement, in Malheur County
21 Circuit Court, in case: Ernest Lee Dean v. Brad Cain, Snake River Correctional
22 Institution. On July 29th, 2019 Malheur County Court entered a Order of Dismissal
23 Without Prejudice **Attached:** is Copy of Order of Dismissal.
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4 **20.** Plaintiff latter sought to pursue Jurisdiction in The Oregon Supreme Court, on the
5 grounds of Justifiable Controversy. The case was subsequently dismissed by the Oregon
6 Supreme court without prejudice on October 24th, 2019. **Attached:** is a copy of Order
7 Granting Motion to Waive filing fee and denying Petion for Writ of Habeas.

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9 **21.** At issue was whether plaintiff cognizant claim for Condition of Confinement was
10 properly pursued in the proper jurisdiction. Plaintiff argued that there were arbitrary
11 delays on the part of the Malheur County Circuit Court, and the handling of the case.

12 **22.** Plaintiff, now brings this 42 U.S.C. 1983 Actions for damages resulting from Municipal
13 Liability For Deliberate Indifference, Supervisory Liability For Deliberate Indifference,
14 Eighth Amendment Deliberate Indifference and Access To Care, and alleges
15 Unconstitutional Conditions of confinement and Cruel and Unusual Punishment under
16 the Eighth Amendment applicable to the State under the Fourteenth Amendment of the
17 United States Constitution.

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19 **23.** Plaintiff has opted to forgo, another filing of a State Habeas Claim in Malheur County
20 Circuit Court, as he believes that the defendants in the original Stat Habeas Petition no
21 longer presents a Justiable Controversy, and the issues no longer qualifies for immediate
22 Judicial Scrutiny. Plaintiff has appropriate remedy available in this court for a claim of
23 Municipal Liability, and Supervisory liability for deliberate Indifference,
24 Eighth Amendment Deliberate Indifference, and Access to Care.

LEGAL BASIS FOR 42 U.S.C. 1983 COMPLAINT

24. Plaintiff will show a Eighth and Fourteenth Amendment violation on the part of Policy, and or costume by defendants SRCI, and ODOC, and that Prison Officials acted with Deliberate Indifference or that their conduct was so reckless as to be tantamount to a desire to inflict harm.

25. Plaintiff contends that Prison Officials acting in Supervisory capacity in their individual capacity were responsible for unconstitutional conditions of confinement and that there culpable action, or inaction directly attributed to them.

26. Plaintiff has named these Prisoner Supervisor as individual defendants, and will show how there actions through a series of culpable action and inaction attributed to the Constitutional violations, as they acted according to policy and custom at issue.

27. Plaintiff will show these prison supervisors were aware of the unconstitutional policy and custom, and dangerous risk to the plight of plaintiff mental health psychosis.

28. Plaintiff does not alleged the Individual Defendants are directly liable for the lack of Ameliorate Mental Health Care, denied to the plaintiff. Rather plaintiff alleges unconstitutional conditions of confinement in violation of the Eighth Amendment Prohibition against cruel and unusual punishment, as incorporated through the due Process Clause of the Fourteenth Amendment.

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4 **29.** Plaintiff contends that the Individual Defendants acted or failed to act in manner that was
5 deliberately indifference to the Plaintiff Eighth Amendment Right, and demonstrated
6 there involvement and the liability of that supervisor in this respect.
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8 **30.** Plaintiff contends that these Individual Defendants may be liable on the basis of there
9 own acts or omissions, including supervising with deliberate indifference towards the
10 possibility that deficient performance of the task may have contributed to Plaintiff Civil
11 Rights deprivation separate from the Municipal Liability.

12 **31.** Plaintiff will plead a separate claim against these individual defendants for deliberate
13 indifference based upon Supervisors knowledge of and acquiescence in unconstitutional
14 conduct by his or her subordinates.
15

16 **32.** Plaintiff will show the requisite casual connection, by presenting a series of factual events
17 by others, or by knowingly refusing to terminate a series of acts by others which the
18 Prison Supervisor knew or reasonably should have known would cause others to inflict a
19 Constitutional Injury on the Plaintiff.
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4 **STATEMENT OF FACT**

5 **DEFENDANTS FAILURE TO PROVIDE**
6 **AMELIORATIVE MENTAL HEALTH CARE**
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8 **33. Supporting Fact I :** In Support of Plaintiffs position, he cites to the absence of any
9 description of ameliorative care in the prison mental health Policy, to the extent Mr.
10 Dean believes that the distinction is significant-since an affirmative course of treatment
11 must have been medically unreasonable-the care received and the nature of that care was
12 based on Systemically Misdiagnosis endorsed based on ⁽¹⁾out dated assessments
13 procedures , ⁽²⁾ selective symptom documentation, and ⁽³⁾20-minute Video Conference
14 once every 4-6 weeks, reflecting exclusive reliance on observation and assessment
15 through a 20-Minuit video session once every 45-60 days. without an accurate formal
16 diagnosis, physical examination, detailed and dynamic treatment plan, and ending up at
17 the same diagnosis perpetrated by Dr. Trudy Evans and other BHS Mental Health staff at
18 SRCI as, Borderline Personality Disorder, in order to justify limited or non-effective
19 treatment. (see **Plaintiff Exhibit #-4 & Exhibit #-5: Declaration of Dr. Trudy Evans/**
20 **Darci Jennings, QMHP**)
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5 **34. Supporting Fact: II** In support of Plaintiffs position, he cites to the absence of any
6 description of ameliorative and written assessments by multiple BHS Mental Health staff
7 and officials that kept a record of behavior assessments and made notes related to
8 behavior modifications recommendation, and did not directly address plaintiff mental
9 health psychosis, and the Plaintiffs own Inmate Communication Forms and Grievances
10 that the mental health treatment he received while at SRCI has failed to address his actual
11 mental health symptoms for which Mental health staff documented that there was No-
12 Change in Condition. (see Plaintiff Exhibit #-1 & Exhibit #-2 : ODOC BHS
13 Medication Progress Notes and BHS Progress Notes)
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15 **35. Supporting Fact III :**Plaintiff Mr. Dean's position is further supported by the Inmate
16 Communication Forms and Grievance which states that Defendants "failed to treat Mr.
17 Deans mental health conditions, and the care he received at Snake River Correctional
18 Institution was so cursory or non-effective his condition either worsened or remained the
19 same. (see Plaintiff Exhibit # 6-A: Inmate Grievance and Inmate Communication Form)
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6 **CLAIM I**

7 **MUNICIPAL LIABILITY**

8 **36.** Dr. Trudy Evans examination shows inconsistencies in her declaration. She diagnosed
9 Borderline Personality Disorder: “BPD is a disorder Characterized by among other
10 symptoms, extreme emotions, impulsiveness, frequent mood swings, anxiety, and bouts
11 of depression. although the symptoms of BPD can be managed with appropriate
12 medication, there is no medication that directly treats BPD itself.”
13 **(see Plaintiff Exhibit #-4 : Declaration of Trudy Evans: Page-2 at Paragraph-6)**
14

15 **37.** On August 10th 2017 Dr. Trudy Evans wrote in in her Objective Findings: “ Ms. Ingals,
16 QMHP is also a participant in this meeting. A/O x 4 with good grooming. He makes good
17 eye contact with both providers. His speech is clear with RRR. Thoughts are organized
18 and relevant, no delusional content. He is pleasant and easily engaged in dialogue. He
19 remains calm throughout the meeting.
20

21 **38.** He is proactive in his care today. Perceptual disturbance are not present or reported.
22 Weight: 208#. Dr. Trudy Evans Wrote Diagnosis per DSM-5: 301.83 Borderline
23 Personality Disorder DO, HX Medication Misuse. And under the Question: Has there
24

1 been a change in diagnosis? Dr. Trudy Evans Marked-No, with an X.

2 **(see Plaintiff Exhibit #-1: ODOC-BHS Medication Progress Notes: Pages-8)**

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6 **39.** Plaintiff contends that the record is inadequate to assess plaintiff's mental impairments,
7 and that he continues to suffer from PTSD. Dr. Trudy Evans has endorsed the practice of
8 manipulating her assessments to conform to selective symptoms, which tend to justify
9 limited treatment of Borderline Personality Disorder (BPD) The record now contains no
10 new medical evidence to enable that assessment;

11
12 **40.** On October 17th, 2018, Dr. Trudy wrote her final Subjective Report: “ Dean refuses to
13 attend his appointment today. He brings a kyte (Inmate communication Form)he has
14 written and gives it to the OS to place in BHS medical records file. The kyte states, in
15 part, that he is revoking his consent to any further mental health care provided by me.”

16 **(see Plaintiff Exhibit #1: ODOC- BHS Medication Progress Notes Page-16)**

17
18 **41.** It is, therefore, the law of the case that the record must be developed further before
19 plaintiff's conceded, Dr. Trudy Evans evaluation, which is not the most complete
20 medical opinion in the record. **(see Plaintiff Exhibit #-4: Declaration of Trudy Evans:**
21 **Page-2 Paragraph-5)**

22
23 **42.** Thus, that opinion, even if credited as true, would not establish Finality. The record as a
24 whole here creates serious doubt as to whether the plaintiff is receiving Ameliorative

1 Mental Health Care, It may be that plaintiff's failure to seek treatment and the
2 Discontinuation of all of plaintiff mental health medication, and a Systematic
3 misdiagnosis are in fact actual symptoms of his mental health condition, and it was error
4 for the Malheur County Court to fail to consider that possibility.

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6 43. But the absence of Ameliorative Mental Health Care is apparent in the record and Dr.
7 Trudy Evans, and Darci Jennings, inconsistent statements are widespread and substantial.
8 In the absence of a medical opinion that fully engages with the potential relationship
9 between plaintiff's resistance to treatment, and appropriate mental diagnosis, this court
10 should issue a writ so that plaintiff immediate mental health concerns may be properly
11 addressed without further delay.

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13 44. The controlling question therefore remains whether Dr. Trudy Evans and Darci Jennings
14 took objectively reasonable steps to address The plaintiff serious medical need. It may be
15 that monitoring, rather than intervening, was not reasonable under the circumstances.

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17 45. On August 24th, 2018 Indeed, Dr. Darci Jennings Trudy Evans concedes in her written
18 assessment: 301.83 BPD mod/ LOF 3 due to his being uncooperative during our
19 appointment. He (Mr. Dean) has went to MHC 2 times (Mental Health Central Medical)
20 recently reporting an increase in anxiety yet did not report any to me.

21
22 46. "He is working as a laundry cart pusher, working on his legal work, exercising, playing
23 basketball with other and calling people outside of the institution which indicates he is
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1 functioning well “(Plaintiff is unable to play basket ball due to a back injury, this
2 assessment was misrepresented by Darci Jennings on a regular basis)
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7 47. The Assessment continues: “He reports not getting more than 4 hours of sleep in 24 hours
8 yet does not appear tired in the short amount of time we were talking, he is not yawning,
9 there are no bags under his eyes, he is not rubbing his eyes or struggling to maintain
10 focus. He refused to talk about anything except his desire to have a comprehensive mental
11 health assessment. “(the type of assessment which with a series of physiological test
12 provide an accurate diagnosis and treatment consistent with actual mental health
13 condition.
14

15 48. The Plaintiffs last comprehensive mental health assessment was done in 2014 at Coffee
16 Creek Correctional Facility, Intake, where he received proper care consistent with his
17 PTSD condition. Since arriving at SRCI December of 2014 no new Comprehensive
18 Mental Health Assessment was provided) The written assessment Continues: He was
19 demanding, uncooperative and aggressive so I told him he could leave. Per SARC
20 reviews he has not had any suicide reviews since 9/20/2015 and that was not deemed a
21 SA. (see **Plaintiff Exhibit #-2: ODOC-BHS Progress Notes: Page-15**)
22

23 49. Mr. Dean arrived at SRCI December 2014 from Coffee Creek Correctional Facility and
24 now in 2019 he is in the same acutely mental state of battling PTSD. He has been

1 receiving treatment under a endorsed Diagnosis of Borderline personality disorder. His
2 Treatment for PTSD could have been improved if he was receiving Ameliorative
3 Treatment, such as basic therapeutic interventions, and appropriate diagnosis and
4 medication.

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7 **50.** On that basis alone, a jury could reasonably infer that the care Mr. Dean. received was
8 deficient. Moreover, as a matter of common sense, a jury could find that an inmate
9 described On December 6th 2018 Assessment Line# 5, required more than observation,
10 assessment, and, at best, triage counseling Which Read : “ He reports suicidal and self-
11 mutilating behaviors and gestures while in the community.” (Inmate General Population)
12 the remainder of the assessment seem to be a cut and past insert from a website, listing
13 symptoms of Borderline Personalty Disorder. All Symptoms were listed on a day that the
14 Plaintiff was not even seen, by Darci Jennings. It was a comprehensive Chart and Records
15 Review for diagnosis clarification, which was a substitution for an actual Mental Health
16 Assessment Evaluation .

17
18 **51.** This was in response to Plaintiff repeated request for a Comprehensive Mental Health
19 Evaluation. Instead it was a Comprehensive Chart and Records Review,(Reading A
20 Inmate Past Medical Record) endorsing what Darci Jennings and Other BHS Staff had
21 already written in the record. (**see Plaintiff Exhibit #-2: ODOC BHS Progress Note:**
22 **Pages 20-27)**

1 **52.** The report of Dr. Trudy Evans, Clark, and Jennings and the Mental Health Assessments
2 which support the inference that care was medically unreasonable, further bolster that
3 conclusion. Since a trier of fact could find that Dr. Trudy Evans, failed to take
4 reasonable ameliorative steps.

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8 **53.** The next issue is whether that failure was in the face of a known or obvious substantial
9 risk of serious harm to the Plaintiff, Mr. Dean. There is ample evidence from which a
10 jury could find that the Defendants should have known, and likely knew, that the
11 Plaintiff required care beyond that which was offered at Snake River Correctional
12 Institution, and that he stop receiving treatment for PTSD, instead was offered limited
13 treatment for Borderline Personality Disorder, a condition not supported by a clinical
14 finding but based on a Comprehensive Mental Health Assessment, and, more generally
15 proper treatment and medication for the PTSD condition he suffered, was available at
16 SRCI.

17
18 **54.** In regards to a accurate Diagnosis, Mental Health Classification. To begin, Dr. Trudy
19 Evans and Darci Jennings, own description of Mr. Deans condition, as well as his,
20 acknowledged review of the same by other staff, suggests that they was aware of its
21 serious nature.

22
23 **55.** Dr. Trudy Evans colleague Dr. Jessica Clark noted similar concerns and recorded equally
24 alarming descriptions in Mr. Deans inmate and medical logs under Inerim Information,

1 which read: Reported frustration with BHS and BHS Provider, doesn't feel he is receiving
 2 appropriate care,(**see Plaintiff Exhibit # 1: ODOC-BHS Medication Progress Note:**
 3 **Pages 1)**

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 8 **56.** BHS staff at Snake River Correctional Institution never created ameliorative treatment
 9 plans for prisoners, (see Plaintiff Exhibit #4 and Exhibit-5: Declaration of Trudy Evans/
 10 Declaration of Darci Jennings) . Although mental health staff could refer patients to a
 11 contract psychiatrist, It was well known that 20-minutes video conference once every 4-
 12 6weeks was because the psychiatrist had extremely limited hours, or under staff.

13
 14 **57.** Prison Mental Health official's deliberate indifference must also harm the prisoner. Jett,
 15 439 F.3d at 1096. Here, there is evidence from which a reasonable jury could find that,
 16 because of Dr. Trudy Evans and Darci Jennings failure to take reasonable ameliorative
 17 steps, Mr. Dean suffered through an unnecessarily long period of psychosis and continued
 18 to suffer from Post-Traumatic Stress Disorder ("PTSD"). (**see Plaintiff Exhibit # 6-D:**
 19 **ODOC-Inmate Communication Forms)**

20
 21 **58.** With a Ameliorative treatment plan in place Plaintiff mental health care would have
 22 resulted in a shorter or less intense period of psychosis. In addition, the treatment records
 23 of Dr. Trudy Evans and Darci Jennings reveal a prolonged history of psychosis Taken
 24 together, a reasonable jury could find that Dr. Trudy Evans, and Darci Jennings and Brad

1 Cain was deliberate indifference to Plaintiff serious medical need which caused Plaintiff
2 to suffer "unnecessary and wanton" pain. (see **Plaintiff Exhibit # 6-A**) and a Deprivation
3 of a Constitutional Right.

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8 **59.** As relevant here, a substantial risk of serious harm, and therefore a potential deprivation
9 of due process, exist based on SRCI, and ODOC failure to provide ameliorative medical
10 care beyond regular monitoring and assessment.

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12 **60.** As such, if there is evidence from which a reasonable jury could find that Snake River
13 Correctional Institution(SRCI) had a practice of failing to direct constitutionally
14 mandated actions, or otherwise directed their officials to engage in unconstitutional
15 practices, then they may still be liable to Plaintiff, even absent a finding that any
16 individual official is liable.

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18 **Policies and Customs or Lack of Policy**

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20 **61.** In this case Defendants, SRCI, and ODOC, failed to provide ameliorative mental health
21 treatment, as part of there medical policy. The next question, then, is whether Snake
22 River Correction Institution had policies or customs which either created a substantial
23 risk of serious harm to Plaintiff or the lack of policy relating to Ameliorative Medical
24 Treatment.

Systemic Misdiagnosis

62. Dr. Trudy Evans carried on a practice of Systemic Misdiagnosis of prisoners under her care, in order to limit treatment. At all time treatment was recorded based on Mental Health Assessments and not Clinical findings.

63. Dr. Trudy Evans , made treatment decision around a set diagnosis for which she provided written symptoms, selected, or observed, and would usually fail to list all the symptom a prisoner was having or “cherry pick” the symptoms she wanted to record.

64. The treatment was always created around particular diagnosis, rather than a Mental Condition. Symptoms were sometime misrepresented, or exaggerated to fit within the frame of a diagnosis, with a limited type of care, in this case, Borderline Personality Disorder.(BPD) which limited the treatment plaintiff received, while denying Plaintiff treatment for PTSD.

65. A plaintiff contends that SRCI and ODOC had a permanent and well-settled practice, or "custom," of Systemic Misdiagnosis which gave rise to the constitutional violation.

66. Plaintiff contends that on more than "one or two incidents" systemic misdiagnosis occurred at SRCI and that a policy or custom exists, in misdiagnosis which created a substantial risk of serious harm, to the Plaintiff.

Lack of Ameliorative Policy

67. Plaintiff alleges an extensive and fragmented absence of Ameliorative Medical Care policies and customs on the part of Snake River Correctional Institution. In the interest of efficiency and clarity, the Plaintiff divides these allegations against SRCI and ODOC into three categories.

68. The first category relates to Comprehensive Mental Health Assessment. Snake River Correctional Institution had a practice of failing to provide updated assessments of Inmates who had not had a Comprehensive Mental Health Assessment within 3-years or since the time a inmate entered the Prison system at Coffee Creek Correctional Facility, in the case its been 5-years since for plaintiff has received a Comprehensive Mental Health Assessment.

Chart Review Assessments

69. Plaintiff alleges Systematic Misdiagnosis of prisoners based solely on chart review (Reading an Inmate Medical Records, in the Inmate Absence). The BHS Staff carried on a practice of looking through a prisoner medical records in the inmates absent, then creating a written assessment, and making a diagnosis, rather than In-person observation. BHS Staff at SRCI had a custom of creating a written assessment of prisoners mental health conditions even if that Prison was not actually observed.

70. Defendant SRCI and ODOC, had a custom of failing to provide ameliorative mental health care and, relatedly, adequate psychiatric staffing and supervision. With respect to the adequacy of care, the record is replete with evidence that Plaintiff never received

1 ameliorative care at Snake River Correctional Institution. A jury could find that
2 observation and assessment, without more, do not constitute treatment for purposes of the
3 Due Process Clause.

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8 **71.** As further evidence of these shortcomings, Plaintiff also argues that Defendant SRCI and
9 ODOC, also had a custom of inadequately staffing and supervising its mental health team
10 at Snake River Correctional Institution. In This case case, it is uncontested that there are
11 no, On-site regular evaluation with a qualified Mental Health Provider.

12
13 **72.** Instead evaluation are conducted via video conference at Snake River Correctional
14 Institution(SRCI) (see **Plaintiff Exhibit #-3:** Respondent Trial Memorandum: **Pages-**
15 **4**)This encounter, lasted "no more than 15 minutes" and consisted solely of offering a
16 PTSD sufferer Mr. Ernest lee Dean delusional psychotropic medication, for Borderline
17 Personality disorder.

18
19 **73.** There is also evidence that Snake River Correctional Institution lacked an onsite clinical
20 supervisor for QMHPs, (see **Exhibit # 6-B:** Inmate Communication:)and that the Health
21 Service Administrator split time between SRCI and a facility in Oregon. A reasonable
22 jury could find that, based on the paltry hours worked by Dr. Trudy Evans in and the
23 absence of an onsite clinical supervisor, SRCI had a custom of inadequately staffing and
24

1 supervising its mental health division and that, along with the lack of ameliorative care
2 offered by available staff, this created a substantial risk of serious harm.

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4 **74.** Plaintiff had a serious medical need and suffered from PTSD. SRCI Mental Health
5 Assessments were, inadequate to meet Plaintiffs need. SRCI and ODOC carried on a
6 "custom of which the supervisor must have been aware.

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9 **75.** Oregon Department of Corrections (ODOC was responsible for medical care at Snake
10 River Correctional Institution(SRCI) a reasonable jury could find that Oregon Department
11 of Corrections , through Dr. Donald Dravis, the Chief Psychiatrist, was actually or
12 constructively aware of SRCI custom inadequately staffing and supervising its mental
13 health team. (**See Plaintiff Exhibit# 6-C: Inmate Communication Form**)

14
15 **Deliberate Indifference.**

16
17 **76.** Plaintiff alleges an extensive and fragmented list of deficient policies and costumes on
18 the part of Snake River Correctional Institution. (SRCI) Plaintiff specifically argues that
19 SRCI had a custom of failing to provide adequate mental health assessments with clinical
20 findings. In fact the current policy under Mental Health Assessments, does not include
21 clinical findings, as part of a evaluation. (**see Plaintiff Exhibit #6-G: Inmate**
22 **Communication Form: Pages 1)**

1 77. The language for mental health assessment is vague and insufficient to provide a adequate
2 evaluation without a clinical finding. The vague Policy Reads: Mental Health
3 Assessment: A Process in which an inmates need for mental health service is determined
4 through an evaluation of the inmates strength, goals, needs, and current level of
5 functioning. **See Policy at: OAR 291-124-1010 (8).**

6
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10 78. No where in the definition for mental health assessment does it allow for chart review
11 evaluations. There is no possible way to determine current level of functioning if the
12 inmate is not present. Yet this custom is perpetuated by mental health staff, and the
13 mental health assessments are constitutionally insufficient.
14 **(see Plaintiff Exhibit # 6-G: Pages 2)**

15 79. SRCI Mental Health staff, had a custom of creating written mental health assessments on
16 inmates during evaluations without actually observing the inmate. Diagnosis were made
17 based on these written mental health assessment. The mental health records were
18 endorsements of a particular diagnosis. A course of treatment was provided according to
19 these written assessments, rather that clinical findings. **(See Plaintiff Exhibit #-1 ODOC-**
20 **BHS Medication Progress Note: Page-13)** Plan: based on assessment, continue meds as
21 above staffing will be scheduled with BHS Manager and QMHP follow up 6 weeks;
22 sooner with concerns.

80. Plaintiff alleges SRCI and ODOC knew or should have known that these practices were likely to create such a risk or lead to violations by employees. (**Plaintiff Exhibit# 6-D: Inmate Communication Forms: Pages 1-6**) A jury could find it obvious that failing to perform these services would likely result in dangerously deficient mental health care, and, indeed, SRCI and ODOC, own policies evidence that it understood these risks.

Moving Force.

81. Finally, having found evidence that Oregon Department Of Corrections(ODOC) and Snake River Correctional Institution (SRCI) had policies and customs reflecting their deliberate indifference to Plaintiff serious medical need, Plaintiff contends that these practices were the "moving force" behind Plaintiffs injuries.

82. Plaintiff alleges that the policy or custom as presented in this complaint is "closely related to the ultimate injury, that the injury would have been avoided" had SRCI and ODOC employed an appropriate policy. (see **Plaintiff Exhibit # 6-G: Inmate Communication Form: Pages-3-7**)

83. Plaintiff contends that SRCI, practices are closely related to Plaintiff prolonged psychosis and PTSD. and that SRCI failure to provide ameliorative care, including

1 through Dr. Trudy Evans, or Darci Jennings is also closely related to Plaintiffs prolonged
 2 psychosis and PTSD. (see Plaintiff Exhibit 6-E: Inmate Communication form: Pages 1-5)

3
 4 **84.** Both suggest that further treatment, including appropriate staffing and supervision, would
 5 have resulted in a shorter or less intense period of psychosis. In addition, the treatment
 6 records of Ernest Lee Dean (diagnosing and describing BPD) symptoms . . . are directly
 7 related to" his time at SRCI), support the conclusion that these failings prolonged
 8 Plaintiffs psychosis and caused him to be denied treatment for PTSD.

9
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 12 **85.** Taken together, a reasonable jury could find that SRCI customs, as well as Oregon
 13 Department of Corrections ratification of those customs, were the moving force behind
 14 Plaintiffs injuries. (see Plaintiff Exhibit# 6-F: Inmate Communication From: Pages 1-3)

15 16 **CLAIM 2**

17 **SUPERVISORY LIABILITY FOR DELIBERATE INDIFFERENCE**

18 19 **86. Unconstitutional Conditions of Confinement**

20 Plaintiff alleges that defendants; Dravis, Ruthven, and Smith, knowledge of the
 21 unconstitutional conditions in the prison at SRCI, including there knowledge of the
 22 culpable actions of there subordinates, coupled with there inaction, amounted to
 23 acquiescence in the unconstitutional conduct of there subordinates.,
 24 (Dr. Trudy Evans, and D. Jennings).

Statutory Duty

87. Defendants; Dravis, Ruthven, and Smith are required by statute to supervise qualified Mental Health Associates (QMHA) and Qualified Mental Health Professional (QMHP), at SRCI.

88. Plaintiff alleges that Psychiatric treatment administered by QMHA, and QMHP Specifically by Dr. Trudy Evans, Dr. Clark, and D. Jennings were used for punitive purposes, and defendant Dr. Daryl Ruthven knowingly refused to terminate a series of acts by Dr. Clark, which he knew or reasonably should have known caused Plaintiff Constitutional Injury.

89. On April 15th, 2016 Plaintiff suffered a mental health psychosis, due to Dr. Clark's failure to conduct a timely chart review of plaintiff medications. A Chart Review is when a Prisoner Medical records are looked at in order to assess medication dosage level, and address side effect issues,

90. Plaintiff sent an Inmate Communication form to Dr. Clark at the time Plaintiff reported complaints of Anxiety Attacks, Chronic Migraines Headache, Plaintiff medications was

1 delayed 1-moth before he received a chart review. (A chart review is a assessments of the
2 medication an inmate is prescribed in order to make proper adjustment to dosage level).

3
4 **91.** On April 18th, 2016 Prison officials response to the Plaintiff Inmate Communication
5 Form was BHS-Staff who simply wrote that an email would be sent to the proscriber to
6 move Prozac to Am. **See Plaintiff Exhibit # -7**

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12 **92.** On June 27th, 2016, Plaintiff still suffering a mental health psychosis due to Dr. Clark
13 refusals to properly adjust Plaintiff medications. Plaintiff sent an Inmate Communication
14 Form to J. Bugher, MHS Manager at the time at SRCI, with reports of Severe Anxiety, 4-
15 days without eating, and less than 3-4 hours of sleep, and was experiencing tremors.

16
17 **93.** On June 28th, 2016, Prion Official responded and wrote that an appointment with mental
18 health was scheduled with a Mental Health Counselor (MHC). **See Plaintiff Exhibit #-8**

19
20 **94.** Defendants, Dr. Daryl Ruthven received chart review reports on Plaintiff mental health
21 care during this time and was notified by email specifically another Prison Mental Health
22 staff Ms. Wagner on two separate occasions that there were problems with Plaintiff chart
23 reviews and that Dr. Clark was the medical provider at that time.

1 **95.** On November 30th, 2016 Plaintiff filed an Inmate Grievance against Dr. Clark and
2 reported problems with ongoing Depression, Anxiety and Sleep Deprivation. Plaintiff
3 was also falsely accused of misrepresenting detail about his mothers death according to
4 Dr. Clark following Plaintiff complaints about the chart review.

5 **See Plaintiff Exhibit # -9**
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12 **96.** Dr. Clark couched Plaintiff complaint about chart reviews, into her own mental health
13 status reports about the Plaintiff, and crated a new diagnosis in order to highlight Plaintiff
14 complaints and grievances about her, as mental health symptoms.
15

16 **97.** Dr. Clark made drastic changes in the plaintiff medication, the change occurred without
17 an in-person appointment or Mental Health Assessment. Plaintiff was given a new
18 diagnosis based on discussions between Dr. Clark and a Prison BHS-Counselor, with out
19 Plaintiff being present, or evaluated, in person. **See Plaintiff Exhibit #- 9**
20

21 **98.** On December 22, 2016, Dr. Clark wrote in her response to the plaintiff grievance and
22 denied downgrading plaintiff diagnosis, however what is clear is that the change did not
23 occur based on a in person appoint for mental health assessment.
24

See Plaintiff Exhibit #- 10

1
2 **99.** Defendant, Dr. Daryl Ruthven, received updated reports during this time from Dr. Clark,
3 and made no attempts to intervene or ensure that Plaintiff was actually being seen in
4 person during the time Dr. Clark delayed Plaintiff chart reviews, and changed his
5 diagnosis. Its common Procedure among Mental Health Professionals to Assess a Patient
6 before making drastic changes in medication and diagnosis.

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12 **100.** On June 3rd 2017, Plaintiff filed an Inmate Grievance Appeal to Dr. Clark
13 response for the change in medication and diagnosis. Plaintiff argued in the grievance
14 appeal Dr. Clark claim that the change in diagnosis reflects current Psychiatric
15 Symptoms. Plaintiff clearly pointed out that Dr. Clark used policy as an excuse not to
16 provide effective medications in treatment of symptoms. **See Plaintiff Exhibit #- 11**

17
18 **101.** On Jan 10th 2017, Defendant Dr. Daryl Ruthven in his response to Plaintiff
19 grievance appeal claimed that clinicians have not seen objective evidence to support the
20 previous diagnosis of Post Traumatic Stress Disorder (PTSD), and claimed that plaintiff
21 PTSD was originally based on self reports, and claimed it was inaccurate. This is contrary
22 too how Dr. Clark stated the she reached the conclusion based on her discussion with
23 another BHS-Counselor Ms. Ingalls. This was not a Mental Health Assessment
24 Procedure, but rather an isolated discussion without examining the Plaintiff Symptoms.

1
2 **102.** This implied that Plaintiff was being treated for months or years based on
3 plaintiff diagnosis of himself, and they recently reached the conclusion it was wrong, but
4 not until Plaintiff filed complaints and grievances about his mental health care, there is a
5 causal connection between the Plaintiff complaints against Dr. Clark, and the timing of
6 this new conclusion regarding change in medications and diagnosis, which had the effects
7 of punishment.

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12 **103.** Defendant, Dr. Daryl Ruthven also stated in his response and alleges that Plaintiff
13 repeatedly requested benzodiazepines and implied that Plaintiff sole purpose was to abuse
14 drugs. Plaintiff has not written an inmate communication requesting this medication,
15 Plaintiff Communications reported complaints of Anxiety, Sleep Deprivation and the lack
16 of a chart review, all issues that Dr. Daryl Ruthven had knowledge of and made no
17 attempts to address them in his written response. **See Plaintiff Exhibit#- 12**

18
19 **104.** It is clear that there were no adequate clinical findings for changing Plaintiff
20 diagnosis and medications since defendants failed to actually conduct a mental health
21 assessment on Plaintiff condition in person. This is a drastic departure from a standard of
22 care and what is acceptable psychiatric assessment in the mental health community.
23
24

1 **105.** There was no way to reach such a drastic change in Plaintiffs mental health care
2 based on Dr. Clark and Ms. Ingalls discussion about the Plaintiff in his absence, and then
3 claiming the decision reflects plaintiff current Psychiatric Symptoms.

4
5 **Casual Connections**

6 **106.** On February 28th, 2017, Plaintiff filed an appeal to Defendants Dravis response
7 and clearly pointed out further punitive punishment by Dr. Clark, when she drastically
8 reduces plaintiff mental health medication of Elavil, after learning of plaintiff written
9 complaint against her.

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14 **107.** Dr. Clark alleged that plaintiff "Elavil" was reduced based on lab resulted test of
15 Plaintiff "Elavil" level in his blood being at a toxic level. However the fact is Dr. Clark
16 knew of the lab results for 3-months and made no attempt to reduce plaintiff "Elavil" until
17 Plaintiff filed an Inmate Grievance against her

18
19 **108.** These action further support, vindictiveness and punitive mental health treatment
20 based on the timing of Dr. Clark reduction of Plaintiff medication. and the fact that
21 Plaintiff Elavil level were allegedly at a toxic level, information she sat on for 3-months.

22 **See Plaintiff Exhibit#-13**
23
24

1 **109.** Defendant, Dr. Daryl Ruthven, continued to receive weekly reports from Dr.
2 Clark, his Subordinate responsible for reporting mental health treatment of prisoners at
3 SRCL.

4
5 **110.** Dr. Daryl Ruthven, continued to allow Dr. Clark to make changes to Plaintiff
6 mental health care without providing a visual assessment in person, video assessment.
7 Plaintiff condition worsened over time as Dr. Daryl Ruthven received weekly reports.
8 Plaintiff condition was treated as Non-Emergent. **See Plaintiff Exhibit#- 14**

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14 **CLAIM 3**

15 **SUPERVISORY LIABILITY FOR DELIBERATE INDIFFERENCE**

16
17 **111.** Defendant Dr. Donald Dravis, own culpable in actions in the training, supervision
18 or control of his subordinates, created a hazardous condition of plaintiff confinement.

19
20 **112.** Plaintiff mental health provider was replaced by Dr. Trudy Evans at the end of
21 2017. Dr. Evans who took over as Plaintiffs mental health provider, was determined from
22 the very beginning, according to her own statement to “treat patient inmates according to
23 there attitude.”

1 **113.** Dr. Evans continued with the abusive treatment tactics, of her predecessor, and
2 followed the same course of care suggested by Dr. Clark, before transferring Plaintiff
3 mental health records to the care of the new mental health provider Dr. Evans.
4

5 **114.** Under Dr. Evans care, Plaintiff condition continued to worsened by the use of
6 untrained or unqualified medical Staff at SRCI who were designated to be responsible for
7 prison mental health medications during Plaintiffs transfers to court.
8

9 **115.** Plaintiff suffered a seizure upon arriving at the Clackamas County Jail for a court
10 hearing in a criminal case, and went 2-weeks without medications prescribed by
11 Dr. Evans.
12
13

14 **116.** After Plaintiff return to SRCI from court, he went another 2-weeks without his
15 mental health medications, and suffered symptoms of withdraw, Clonic Seizures, and
16 Migraine Headaches.
17

18 **117.** Plaintiff sent an Inmate Request to Dr. Evans, who made a statement to plaintiff
19 during a 20-minute video assessment and stated: "So I hear you like to complain a lot,
20 don't bother sending me a bunch of Inmate Communication Request, I will see you every
21 45-60 days to check on your mental health status."
22

23 **118.** Plaintiff filed an Inmate Grievance against Dr. Trudy Evans and pointed out that
24 Dr. Evans failed to fax a copy of plaintiff medication list to county Jail after leaving for

1 transport. His medication was delayed after he return to SRCI from court resulting in
2 plaintiff 2-week delay in medication.
3

4 **119.** Dr. Trudy Evans denied any wrong doing, and continued to send weekly reports to
5 Dr. Donald Dravis, who was told that a medication list was faxed to the county Jail. But
6 this turned out to be false, as the receiving county was forced to send 3-faxed documents
7 to Dr. Evans requesting the list of medication the Plaintiff was prescribed. It took nearly a
8 month to obtain a medication list from Dr. Evans.
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14 **120.** On May 2, 2018, Defendant Dr. Donald Dravis responded to Plaintiff grievance
15 appeal citing a policy of the Oregon Department Of corrections, procedure 3 P-E-03,
16 which deals with transfer screening.
17

18 **121.** This was an attempt to justify Dr. Evans reckless disregard in providing Health
19 care staff a list of medication to be faxed. Dr. Evans did not prepare a list of medications,
20 as required by policy. **See Plaintiff Exhibit- # 15**
21

22 **122.** On September 10th, 2018, Plaintiff reached out to defendant, Dr. Donald Dravis,
23 and in a written Inmate communication form, Plaintiff reported to Dr. Dravis that he was
24 suffering an increase anxiety effecting his ability to sleep.

123. Plaintiff reported to Defendant, Dr. Donald Dravis that Dr. Evans ignored his mental health compliant and concerns. Dr. Evans was notified of the adverse side effects Plaintiff suffered from the prescription of “Lepro” he was prescribed for depression by Dr. Evans Her response was an increase in the dosage from 15 milligrams a day to 40-milligrams a day, as a result Plaintiff suffered acute gaps in short term memory function.

124. Defendant, Dr. Donald Dravis, after having knowledge of the hazardous mental health treatment to plaintiff health, with reports of adverse side effects from the prescription of Lexpro” which was increase by Dr. Evans. This showed a complete disregard for plaintiff health and safety. Dr. Dravis response on September 24th, 2018 was deliberate Indifference when he suggested that Plaintiff contact Dr. Evans about the problem. **See Plaintiff Exhibit #-16**

CLAIM-4

SUPERVISORY LIABILTY FOR DELIBERATE INDIFFERENCE

125. Defendant, R. Smith, was personally involved in the sick call procedures at SRCI, which did not permit adequate mental health assessment of plaintiff mental health

1 complaints and the conditions of confinement violated the plaintiff Eighth and Fourteenth
2 Amendment.

3
4 **126.** Defendant R. Smith was nonetheless liable in her individual capacity because she
5 knew or should have known about the health risk to plaintiff deteriorating physical and
6 mental condition, due to inadequate sick call procedures. Defendant R. Smith was
7 deliberately indifferent to plaintiff deteriorating mental health psychosis.

8
9 **127.** On October 10th, 2018, Plaintiff reached out to R. Smith, with reports of
10 medication withdraw due to the abrupt discontinuation of Plaintiff "Prozac without
11 notice, or chart review.

12
13
14 **128.** Plaintiff further reports in the inmate communication sent to R. Smith that he was
15 experiencing cold sweats, nausea, and ringing in ears, and reported that the discontinued
16 medications by Dr. Evans was punishment for filing a complaint against Dr. Evans.

17
18 **129.** On October 9th, 2018, Defendant R. Smith wrote in her response that "Ms. Evans
19 had addressed the discontinuing medications with nursing." No further action was taken.
20 R. Smith, took no steps to provide a mental health referral after being informed of
21 Plaintiff medication withdraw. **See Plaintiffs Exhibit #-17**

1 **130.** On October 11th, 2018, Plaintiff reached out to Defendant, R. Smith and reported
2 that he was suffering anxiety, and sever migraine which were continuing withdraw from
3 the discontinuation of Plaintiff medication.

4
5 **131.** On October 15th, 2018 the written response was less than a sentence that Plaintiff
6 mental health complaint was sent to mental health counselor(MHC). A date stamp alleged
7 that Plaintiff was seen on that date. **See Plaintiffs Exhibit #- 18**

8
9 **132.** On October 17th, 2018, Plaintiff reached out to Defendant, R. Smith, and notified
10 her that he was, unable to function and was suffering anxiety, distress and ongoing panic
11 attack.

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16 **133.** On October 19th, 2018, Plaintiff received a written response from D. Jennings, (a
17 Mental Health Counselor), who claimed that plaintiff was seen on the same date plaintiff
18 sent the Inmate communication to R. Smith.

19
20 **134.** This further shows the mind set of Prison Mental Health Staff regarding Plaintiff
21 deteriorating psychosis it was the equivalence of receiving mental health care in written
22 form-on paper, without any meaningful remedy.

1 **135.** On October 23rd 2018, Plaintiff reached out to R. Smith, still suffering major
2 medication withdraw, Plaintiff reported migraine headaches, dizziness, and sleep
3 deprivation, even after Plaintiff was seen by Prison Mental Health Staff. Plaintiff was
4 sick and unable to even attend a BHS-Appointment with D. Jennings and R. Smith.
5 Plaintiff condition was treated as non-emergency.

6
7 **136.** During the date of the Plaintiff BHS-Appointment, Plaintiff was berated, and
8 threatened while he was sick and physically suffering. D. Jennings and R. Smith refused
9 to send plaintiff to central medical or provide a referral with a Qualified Mental Health
10 professional, even with knowledge of Plaintiff mental and physical withdraw conditions.

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17 **137.** Plaintiff attempted to leave the BHS-Appointment with D. Jennings and R. Smith,
18 as he suffered withdraw sickness and was told by D. Jennings he could not return to his
19 cell to lay down and was ordered to sit in the BHS waiting area until the next institutional
20 movement.

21
22 **138.** Plaintiff suffered tremors and was sweating profusely, the Correctional Officer on
23 duty that day saw how bad Plaintiff condition was then allowed plaintiff to leave to return
24 to his cell to lay down.

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139. On October 25th, 2018, R. Smith responded to Plaintiff written Inmate Communications about his withdraw for the discontinuation of his medication. R Smith gave plaintiff a written ultimatum in essence. Plaintiff medication were all discontinued by Dr. Evans, when plaintiff exercised his right to refuse further treatment from Dr. Evans.

140. As a result all of plaintiff medications were discontinued, causing Plaintiff major withdraws symptoms.

141. Defendant, R. Smith Solution, in having the medication restarted was to induce Plaintiff to agree to another scheduled appointment with Dr. Evans

142. This was what Plaintiff interpreted as an extortionist tactic in order to coerce the Plaintiff in to continuing treatment with the person he complained about, Dr. Evans, and now being told in essence he would be given his medication if plaintiff did not excersise his right to refuse. **See Plaintiff Exhibit #-20**

143. On June 6th 2019, Plaintiff reached out to Defendant R. Smith, and reported that D. Jennings (Mental Health Counselor) were scheduling the plaintiff for appointment with her, even after plaintiff provided several written and verbal refusal.

1
2 **144.** These appointment schedule by D. Jennings became opportunities for harassment.
3 Plaintiff appeared at the appointment to cancel in person, and was verbally threatened by
4 D. Jennings with Solitary Confinement in the disciplinary Segregation unit.
5

6 **145.** On a few of these appointment Plaintiff was yelled at in the waiting area of the
7 BHS Building by D. Jennings, and told he could not refuse a BHS-Appointment. D.
8 Jennings on one occasion punished the Plaintiff for exercising his right to refuse by cell
9 restriction in his cell for 24-hours.
10

11 **146.** On June 11th, 2019, Defendant, R. Smith, sent Plaintiff a written response to
12 Plaintiff Inmate Communication reporting the harassment by D. Jennings. But, R. Smith
13 justified the harassment based solely on the fact that plaintiff has a mental health
14 diagnosis.
15
16

17 **147.** Defendant, R. Smith made no mention of plaintiff chief complaint of medication
18 withdraw from the total discontinuation of Plaintiff mental health medications and in fact
19 continued to place the plaintiff Schedule appointment call-out while ignoring plaintiff
20 Sick call complaints.
21

22 **148.** R. Smith Chose to consciously avoid addressing the numerous Sick call
23 complaints or the plaintiff deteriorating condition. R. Smith took no action to Plaintiff
24

1 Mental Health concerns even with the awareness of Plaintiffs mental health suffering
2 and Psychosis. **See Plaintiffs Exhibit #-21**

3
4 **FIRST INJURY**

Claim 1-4

5 **149.** As a result of the omission and culpability of the defendants, SRCI, ODOC,

6 Dravis, Ruthven, and Smith, Plaintiff became extremely distressed in his effort to obtain
7 Ameliorative Mental Health Care, exacerbated by his pre-existing depression. His
8 emotional status worsened during each time he was seen via the 20-minute video
9 assessments every 45-60-days.

10
11 **150.** Plaintiff condition for Post-Traumatic Stress Disorder worsened, including stress
12 disorder, with anxious mood, major depression, generalized anxiety disorder, and Panic
13 Disorder, Permanent Migraine Headaches.

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18 **151.** Plaintiff Psychological Condition are severe, continuing, and permanent. Plaintiff
19 sought damages, to compensate him for his extreme and severe emotional distress,
20 sleeplessness, fear and anxiety which significantly interrupted his normal daily life, and
21 activities and will continue to do so in the future.

22
23 **CLAIM-5**

24 **EIGHTH AMENDMENT DELIBERATE INDIFFERENCE**

Statement of Facts

152. On February 1, 2015, Plaintiff was diagnosed with a serious medical condition Chronic Degenerative Disc Disease. **See Plaintiff Exhibit #- 22**

153. On May 16th, 2016, Plaintiff wrote a letter to Colette Peters, and reported sever Chronic Pain, and a discontinuation of all pain medications by defendant Garth Gulick. **See, Plaintiff Exhibit #-23**

154. Plaintiffs Degenerative Disc Disease went untreated since February, 15, 2015, thru 2019., resulting in substantial and recurring pain and discomfort.

155. The untreated Degenerative Disc Disease created a significant adverse effect on Plaintiff daily activities including a significant risk of permanent disability.

THE SUBJECTIVE STANDARD OF DELIBERATE INDFERENCE

156. Since being diagnosed with Degenerate Disc Disease in 2015, Plaintiff has sought and been delayed medical treatment for back, and spinal Pain for 4-years, and has suffered unnecessary and wanton infliction of pain.

1 **157.** Plaintiff alleges Deliberate indifference violations against defendant Garth Gulick,
2 the Prison Medical Provider for acting with deliberate indifference to Plaintiffs
3 Degenerative Disc Disease, Back and Spinal Pain.

4
5 **158.** On May 3rd, 2016 Plaintiff filed an Inmate Grievance against Gulick. Plaintiff
6 alleges Defendants Gulick was deliberately indifferent to Plaintiff unnecessary and
7 wanton infliction of pain manifested by his response to Plaintiff medical needs. **See**
8 **Plaintiff Exhibit #-24**

9
10 **159.** On December 13th, 2017, Plaintiff wrote defendant Gulick, a Sick call request, Via
11 Inmate Communication form, with reports of chronic and substantial back pain, which
12 had spread to Plaintiffs testicles.

13
14 **160.** On December 16th, 2017, Prison officials sent only a written response, scheduling
15 another appointment with defendant Garth Gulick. However Plaintiffs pain and suffering
16 was not treated as an emergency. **See Plaintiff Exhibit #-25**

17
18
19 **161.** On January 23rd 2019, Plaintiff wrote defendant, Gulick, with reports of chronic
20 neck pain, worsening, with numbness and tingling.

21
22 **162.** On January 24th, 2019 Prison Officials wrote in a response that defendant, Gulick,
23 left to go to work somewhere else. In other words Gulick was a no-show, to his own
24 scheduled appointment, and rescheduled the appointment. **See Plaintiff Exhibit #-26**

THE OBJECTIVE STANDARD OF DELIBERAT INDIFFERENCE

163. Plaintiff continues to suffer back and spinal pain, which had spread to his neck, defendant, Gulick provided no medical treatment, since 2015. but insisted on scheduling Plaintiff for Sham medical examinations which resulted in further delay in medical care.

164. From 2015 to 2019 Defendant, Gulick Provided no-treatment for Plaintiff Degenerative Disc Disease, Back or Spinal Pain despite repeated request for care, and reports of pain.

165. Plaintiff asserts that defendant, Gulick, intentionally, or maliciously denied and delayed medical treatment for Plaintiff Back and Spinal pain, for 4-Years.

166. On September 10th, 2019 Plaintiff sent a sick call request, via Inmate Communication Form, with reports of pain in spine, and intense swelling in the lower lumbar.

167. On September, 10th, 2019 Prison Officials took no action, other than to schedule Plaintiff in a referral back to Defendant, Dr. Gulick. **See Plaintiff Exhibit#-27**

168. Plaintiff had not been provided medical treatment and was in pain, without being provided or offered pain medications, or medical care of any form.

1 **169.** Defendant, Gulick had subjected Plaintiff to unnecessary and Wanton Infliction of
 2 Pain in violation of the Eighth Amendment, and applicable to the States by the Fourteenth
 3 Amendment.

4
 5 **170.** Defendants, Gulick lack of response and failure to act on plaintiff medical issue
 6 for 4-years, and delaying medical treatment for Plaintiff Degenerative Disc Disease, and
 7 subsequent worsening condition of back and spinal pain, with swelling in his lower
 8 lumbar was deliberate indifference and constituted unnecessary and wanton infliction of
 9 pain.

11 **UNNECESSARY AND WANTON INFLICTION OF PAIN**

12 **171.** Each attempt by the Plaintiff to seek medical treatment for Back and Spinal Pain,
 13 or worsening condition of the Degenerate Disc Disease, was met with the same response
 14 by Defendant, Gulick, a scheduled appointment or sham medical examination, resulting
 15 in absolutely no-medical treatment. **See Plaintiff Exhibit#-28**

16
 17
 18
 19 **172.** Plaintiff has relied on Defendant, Gulick for 4-years to treat his Degenerative Disk
 20 Disease and worsening condition of back pain, which has become the equivalent of
 21 “asking a arson for help to put out a fire.” Defendant, Gulick has failed to provide
 22 treatment, and Plaintiff medical condition has not been treated.
 23 **See Plaintiff Exhibit #-29**

1 **173.** Defendant, Gulick delay in providing Plaintiff medical treatment for 4-years for
2 back and spinal pain has resulted in Plaintiff pain in suffering which serves no
3 Penological Purpose. **See Plaintiff Exhibit #-30**

4
5 **174.** Plaintiff has been diagnosed with Degenerate Disc Disease since 2015, and
6 subjected to two second Opinions, both Opinions by the same Prison Physician,
7 Defendant, Koltes. These inadequate examination has resulted in absolutely no medical
8 treatment. **See Plaintiff Exhibit #-31**

9
10 **175.** Plaintiff now suffers a worsening condition of Degenerative Disc Disease. He has
11 swelling and acute pain in his lower lumbar. Plaintiff struggles daily discomfort and at
12 times must lean against a wall to hold himself up. His condition is still treated by
13 Defendant, Gulick as a non Emergency. **See Plaintiff Exhibit #-32**

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19 **CLAIM-6**

20 **EIGHTH AMENDMENT DELIBERATE INDIFFERENCE**

21 **Statement of Facts**

22 **176.** Plaintiff has been denied a qualified right to obtain his own medical care from a
23 private non-prison medical professional at his own expense. SRCI Prison officials have
24 wrongly denied Plaintiff request for access to such outside care.

1
2 **177.** Defendants, Gulick, Digiulio, Hemphill, Clements, and Koltes, proposed
3 treatment was that Plaintiff be seen by a Pain Specialist for his lower back pain in a TLC-
4 Review Report, but failed to actually provide such treatment.
5

6 **178.** Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio are a group of
7 Prison Physicians and Nurses, collectively operating as the Therapeutic Level of Care
8 Committee, (TLC-Committee), and are individually directly and indirectly involved with
9 making medical treatment decision, regarding Plaintiff Medical Care at Snake River
10 Correctional Institution (SRCI).
11

12 **Legal Issue**

13 **179.** Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio, denial of Plaintiff
14 right to medical care from a Private Non Prison medical Professional at his own expense,
15 violates Plaintiff state granted liberty or property rights proscribed by the Protection
16 under the Due Process Clause, against arbitrary State abrogation.
17

18
19 **180.** Plaintiff contends that he sought either a temporary medical leave from the
20 institution or permission to be examined by a doctor outside the institution at his own
21 expense but that his requests were ignored by prison officials without any statement of
22 reasons.
23
24

1 **181.** Plaintiff was denied a fundamental right to due process based upon the manner
2 in which prison authorities denied his request for access to non-prison medical care.

3
4 **Plaintiff Has A Serious Medical Need**

5 **182.** On June 11th, 2018, defendants, Gulick, Hemphill, Clements, and Digiulio
6 diagnosed Plaintiff with lower back pain.

7
8 **183.** The treatment proposed was for Plaintiff to be seen by a Pain Specialist.

9
10 **184.** Defendants, Gulick, Hemphill, Clements, and Digiulio, failed to follow up with
11 this proposed treatment by failing to send the plaintiff to a Pain Specialist. This was only
12 treatment proposed but never provided to the Plaintiff. **See Plaintiff Exhibit #-33**

13
14 **185.** From 2016 to 2019 Plaintiff was not treated nor examined by a qualified specialist
15 to address a worsening condition of Degenerative Disc Disease.

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19
20 **Lack of Facility Equipment and Supplies**

21 **186.** On October 16th, 2019, defendants, Gulick, Hemphill, Koltas, and Dr. Roberts a
22 Urologist with ODOC , Diagnosed Plaintiff with “Cervical Froaminal Narrowing Lumbar
23 Spine Pain.” This is a worsening condition from the lower back pain, and Degenerative
24 Disc Disease of the Lower Lumbar. **See Plaintiff Exhibit #-34**

1
2 **187.** The treatment proposed was CT, MRI, and 2nd Opinion by the same Prison
3 Physician Dr. Koltes.
4

5 **188.** Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio failed to follow up
6 with sending Plaintiff to outside care for a CT-Scan or MRI. The cost was also a
7 determining factor, following a second opinion by the Defendant, Koltes. No further
8 examination or medical care was provided.
9

10 **189.** Defendants, Prison officials do not have adequate facility and equipment, to
11 provide Plaintiff a CT-Scan or MRI this is only available through outside medical care
12 facility.
13

14 **190.** Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio medical equipment
15 at the Snake River Correctional Institution consist of a single malfunctioning x-ray
16 machine and no ability to conduct MRI or CT-Scan with intravenous contrast, which is
17 required to adequately determine a course of treatment for Plaintiff worsening back and
18 spinal condition.
19

20 **Lack of Qualified Medical Staff**

21 **191.** Defendants, Gulick Hemphill, Koltes, Clements, and Digiulio, are not able to treat
22 Plaintiff worsening Degenerative Disc Disease and back and spinal pain. Nor are they
23 certified specialist qualified to administer an MRI or CT-Scan.
24

1 **192.** Defendants, Gulick, Hemphill, Koltres, Clements, and Digiulio have refused to
2 allow Plaintiff to qualified access to outside care that Plaintiff condition requires.

3
4 **193.** The rendering of medical service regarding Plaintiff medical care has been
5 allowed by defendants Gulick, Hemphill, Koltres, and Digiulio by Non Physician staff like
6 Nurses and Health Service Managers , who have been unlawfully assigned task beyond
7 there training or left without adequate supervision.

8
9 **Plaintiff Was Required By Defendants, To Purchase Service**
10 **Before Access to Outside Care Would Be Approved**

11 **194.** The Plaintiff sought a Temporary medical Leave from defendants, Gulick
12 Hemphill, Koltres Clements, and Digiulio, permission to have an adequate examination be
13 conducted by a Urologist , and Ct-Scan With Intravenous Contrast. But that request was
14 denied by the Defendants, unless Plaintiff “Self Purchase.” **see Plaintiff Exhibit #-35**

15
16 **195.** Plaintiff is indigent and do not have the funds available in his inmate trust account
17 to “Self Purchase Medical Service” for outside care, but has offered to bear the cost for
18 treatment.

19 **Plaintiff Repeated Attempts To Obtain Access To Outside Care**

20
21 **196.** Plaintiff sought a outside referral for medical care from Prison Officials, Hughes,
22 Landverde, and Digiulio on several occasions, but Prison official continued to create
23 excuses for avoiding Plaintiff request, without explanation.
24

1
2 **197.** On May, 18th, 2019, Plaintiff sought a referral from Prison Officials Hughes, the
3 Health Service Manager at the time, and reported, experiencing chronic back aches,
4 numbness and worsening condition.

5
6 **198.** Plaintiff sought an X-Ray or MRI or other appropriate diagnostic test, in order to
7 proceed with the appropriate course of medical treatment.

8
9 **199.** On March 19th, 2019 Prison officials response was a scheduled char review.
10 (This is when Prison Medical staff review an Inmates medical records without providing
11 a actual examination in-person). **See Plaintiff Exhibit #-36**

12
13 **200.** Prison Health Service Manager Amy Hughes, took no immediate action regarding
14 the plaintiff worsening back and spinal condition, after she was notified about Plaintiff
15 pain and suffering.

16
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19
20 **201.** On September 30th, 2019, Plaintiff sought a referral to see a spine specialist, and
21 reported suffering pain in the lower lumbar, with swelling.

22
23 **202.** Plaintiff pain and suffering continued even after the doctor appointment with the
24 defendant, Gulick.

1
2 **203.** During the appointment on the 30th, of September, 2019, Defendant, Gulick would
3 not provide Plaintiff a referral or treatment. When Plaintiff asked defendant Gulick, what
4 will it take to obtain appropriate treatment for the back and spinal pain? Defendant
5 Gulick responded “if you don't like the help I'm giving you, Go to Court.” He was
6 confident that nothing would be done as has been the pattern for years with complaints by
7 other inmates in the past by other inmates, some of those inmates are now deceased.

8
9 **204.** On October 8th, 2019, Prison officials response to Plaintiff request for medical
10 referral or treatment only stated the Plaintiff issue would be presented in a “discussion”
11 by the TLC-Committee. **See Plaintiff Exhibit #-37**

12
13 **205.** The Health Service Manager at the Prison Ms. Hughes took no immediate action
14 to provide a referral to plaintiff after she was notified about the swelling in Plaintiff
15 Lumber, and treated Plaintiff condition as a non emergency.

16
17
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19
20 **206.** On October 18th, 2019, Plaintiff sought a referral to a qualified outside Specialist,
21 from the new, Health Service Manager at SRCI, Ms. Landaverde, and reported that his
22 pain and suffering has been unnecessary prolonged.

1 **207.** Plaintiff notified, Ms. Landaverde that he would suffer irreparable harm and
2 further deterioration unless he was timely examined and treated by an outside specialist.

3
4 **208.** Prison officials response was the same, no further action was taken.

5 **See Plaintiff Exhibit#-38**
6

7 **209.** On October 18th, 2019, Plaintiff attempts to obtain outside care was met with more
8 delay, and another “Second Opinion” by the same Prison Physician, Defendant Koltes,
9 who had conducted the first Second Opinion. Plaintiff was continuing to be shuffled back
10 and forth from Prison Doctor to Sick Call Nurse. Plaintiff was suffering acute pain and
11 swelling, while defendants provided no medical treatment. **See Plaintiff Exhibit #-38.**
12

13 **210.** To the Date of this complaint, Plaintiff has not been provided an outside referral
14 for an examination by a qualified specialist, and he has not received treatment from
15 Defendants, Gulick, Hemphill, Koltes, Clements, or Digiulio.
16
17
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20

21 **211.** To the Date of this complaint, Plaintiff still suffers from the same worsening
22 condition of Degenerative Disc Disease of the Lower Lumber, and he now suffers with
23 swelling and acute pain, that has gone untreated since 2015, up to the filing of this
24 complaint.

1
2 **212.** To the date of this complaint Plaintiff has not been provided an X-Ray, MRI, or
3 CT-Scan since 2016 regarding his worsening Degenerative Disc Disease, Back and
4 Spinal pain, or Swelling in the Lower Lumbar.

5
6 **213.** To the date of this complaint, any medical treatment for Plaintiff Disc, Back, and
7 Spinal condition has been replaced with nothing more than a series of ineffective sham-
8 medical examines by Defendant, Gulick.

9
10 **214.** To the date of this complaint, Plaintiff back and Spinal condition has gone
11 untreated for 4-years, as a result he now suffers a worsening condition.

12 **See Plaintiff Exhibit #-39 and Plaintiff Exhibit #-40**

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21
22 **Plaintiff Attempts To Seek Access to Outside Care**
23 **From Non-Medical Prison Personnel**
24

1 **215.** On October 1, 2019, Plaintiff, sought a referral to an outside specialist from a
2 non-medical prison official, J. Gilmore, the Assistant Superintendent at Snake River
3 Correctional Institution, (SRCI.

4
5 **216.** Plaintiff reported that he was experiencing spinal pain and swelling tissue on the
6 lower lumbar of his back.

7
8 **217.** Prison official only response, was to schedule Plaintiff to another “Review” with
9 the TLC-Committee, Providers; Gulick, Hemphill, Koltes, Clements and Digiulio.

10
11 **218.** Plaintiffs attempts to seek access to outside care was met with more excuses for
12 delay in providing actual treatment. The act of delay was manifested in the response that:
13 “the TLC-Committee will review Plaintiff medical concerns for a CT/MRI or Second
14 Opinion .”

15
16 **219.** These delay tactic were common in the response received from the defendants.
17 The Reviews, Discussion, and Second Opinion always amounted to No-Treatment. The
18 action of scheduled and sending Plaintiff for a CT-Scan or MRI did not occur.

19
20
21
22 **220.** The TLC-Reviews were nothing more than office meetings, sometimes by phone,
23 without actually examining the Plaintiff.

1 **221.** These reviews were commonly called TLC Committee Reviews, which resulted to
2 absolutely no medical treatment for Plaintiff, and had no medical value related to care.

3
4 **222.** No response by SRCI Non-Medical Prison Officials has resulted in actual
5 CT-Scan or MRI.

6
7 **223.** No response by SRCI Non Medical Prison Official has resulted in a referral to a
8 qualified outside specialist.

9
10 **224.** No response by SRCI Non Medical Prison officials has resulted in actual medical
11 treatment, despite the appearance of medical care on paper, in the form of
12 “TLC-Committee Reviews”, no meaningful action has been taken.

13
14 **225.** Plaintiff continues to suffer from acute back and spinal pain, with swelling in his
15 lower lumbar. **See Plaintiff Exhibit #-41 and Plaintiff Exhibit #-42**

16
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22 **AFFIRMATIVE DENIAL OF PLAINTFFS RESQUEST**
23 **FOR ACCESS TO MEDCICAL CARE**
24

1 **226.** Plaintiffs request for access to non-prison medical care was properly made.
2 Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio denied the request
3 without fair consideration in compliance with the requirements of Oregon Law and Due
4 Process.

5
6 **227.** On November 8th, 2019, Plaintiff reached out to Defendant, Gulick, in an Inmate
7 Communication Form, with reports of pain on lower lumbar, swelling in spine, tingling in
8 the left shoulder.

9
10 **228.** Plaintiff provided enough medical criteria that would warrant a “Temporary
11 Medical Leave “ based on the worsening medical condition, and the lack of the institution
12 ability to provide necessary care, and the lack of qualified medical staff, licensed to
13 properly examine, diagnose, and prescribe a course of treatment.

14
15 **229.** Defendants, Gulick Hemphill, Koltes, Clements, and Digiulio, conducted no
16 medical examination on the plaintiff after they were notified of Plaintiff worsening
17 condition. Plaintiff made a specific request to be treated by a medical Practitioner in
18 Boise Idaho, in a Request for Temporary Medical Leave, and was willing to bear the cost.

19 **See Plaintiff Exhibit #-43**

1 **230.** On November 15th, 2019 Defendants responded to the Plaintiff request for
2 Temporary Medical Leave. Despite Plaintiff reports of worsening condition he was not
3 schedule a medical examination instead was schedule for a “Chart Review. “
4

5 **231.** Chart Reviews were only used for non-emergency, low priority, medical issues.
6

7 **232.** The proper consideration by defendants, would have been to schedule a physical
8 examination with a Qualified License Practitioner.
9

10 **233.** But defendants Gulick, Hemphill, Koltres, Clements, and Digiulio latter began to
11 outright ignored the Plaintiff Inmate Communication Forms of Plaintiff reports of
12 Lumbar and Spinal Pain and worsening condition, they continued to treat the Plaintiff
13 medical condition as they have always done, as a non-emergency issue.
14

15 **234.** Defendants, Gulick, Hemphill, Koltres, Clements, and Digiulio drifted away form
16 the standard of acceptable care, that is practice by the same medical community within
17 the State of Oregon, and repeatedly schedule Chart Review, and conducted TLC-
18 Committee Reviews, in replacement for Qualified Examination, Diagnose, and
19 Treatment.
20
21
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24

1 **235.** On November 9th, 1019, Plaintiff sent a duplicate request for Temporary Medical
2 Leave to Defendant, Hemphill, and reported a worsening condition, and the type of
3 criteria that required Access to Outside Medical Care.

4
5 **236.** On November 19th, 2019 defendants, response was further evidence that they were
6 incapable and unwilling to address Plaintiff medical condition because defendants,
7 scheduled the Plaintiff for Sick Call to see a Sick Call Nurse. **See Plaintiff Exhibit #-44**

8
9 **237.** Defendants, Gulick Hemphill, Koltes, Clements, and Digiulio, frequently used
10 sick call nurses to assess Plaintiff condition knowing that they were not qualified
11 themselves to treat Plaintiff.

12
13 **238.** Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio, knew that the
14 Prison sick call procedures were not adequate enough to assess Plaintiff, without a MRI,
15 CT-Scan, or examination by a Qualified Specialist. The sick call nurses only added to
16 further delay while plaintiff continued to suffer in acute pain.

17
18 **239.** On November, 20th, defendants, Gulick Hemphill, Koltes, Clements, and Digiulio,
19 took no action to plaintiff suffering and only wrote the Plaintiff was scheduled for sick
20 call. The sick call nurses became the only form of medical care offered.

21 **See Plaintiff Exhibit #-45**
22
23
24

1 **240.** On November 20th, 2019, defendants, Gulick, Hemphill, Koltes, Clements, and
2 Digiulio denied the Plaintiff request to purchase care in Boise Idaho, in a TLC-Decision
3 Communication, and simply wrote, “No Medical Support.” **See Plaintiff Exhibit #-46**
4

5 **GROUND FOR ACCESS TO OUTSIDE CARE**

6 **241.** Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio denial of Plaintiff
7 request for access to outside care at his own expense violated Due Process Clause against
8 Arbitrary State Abrogation.
9

10 **242.** Plaintiff has a State-Granted Access Right that permits him to obtain care,
11 including specialized or Supplemental care from non Prison medical Professional of his
12 choice, so long as he himself and not the institution bears the cost.
13

14 **LACK OF FACILITY, EQUIPMENT AND SUPPLIES**

15 **243.** Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio, do not have
16 adequate facilities, and equipment, for Plaintiff necessary medical care, even though
17 they proposed treatment for Plaintiff in the form of MRI and CT-Scan, they failed to
18 send plaintiff to a outside medical facility capable of providing this type of examinations.
19

20 **244.** Defendants, are not equip to provide an adequate examination in order to
21 determine a proper course of treatment.
22
23
24

LACK OF QULIFIED MEDICAL STAFF

245. Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio, are not qualified to administer an MRI, or CT-Scan, and on 3-separate occasion have scheduled Plaintiff to see a sick call nurse, even though they knew that Plaintiff condition required more.

246. Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio, have been unable to treat Plaintiff medical condition, and and refused to refer Plaintiff to a Specialist who can. In this case defendants, have refused to provide both Treatment, and Referral to Outside Medical Care.

247. Defendants, Gulick Hemphill, Koltes, Clements, and Digiulio, have authorized medical service regarding Plaintiff care by unqualified Prison Sick Call Nurses.

248. Prison sick call nurses, are not trained to treat Degenerative Disc Disease, Lumbar spine swelling. In this case defendants, Gulick Hemphill, Koltes, Clements, and Digiulio allowed the use of non-Physician staff like sick call nurses to unlawfully become task beyond there training or left without adequate supervision.

PLANTIFF HAS A SERIOUS MEDICAL NEED

249. Plaintiff has been denied medical care, by defendants, Gulick, Hemphill, Koltas, Clements, and Digiulio, through unnecessary delay in examinations, treatment and diagnosis as a result, Plaintiff suffers from a worsening condition of Degenerative Disc Disease of the Lower Lumbar.

250. Plaintiffs delay in examination, diagnosis and treatment has resulted in a swelling of tissue in the lower lumbar and he suffers daily from acute pain in his spine.

251. Plaintiffs medical need call for the attention of a Outside Specialist, and at the very minimum, Pain Management. Plaintiff has not been provided pain medication to help alleviate pain and suffering.

**PLAINTIFF REQUEST FOR TEMPORARY MEDICAL LEAVE
WAS IGNORED WITHOUT A STATEMENT OF REASON**

252. Plaintiff request for a Temporary Medical Leave was not only affirmatively denied, the request was also ignored without a statement of reason, denying Plaintiff Due Process.

253. On November, 11th, 2019, Plaintiff reached out to Brad Cain Superintended of Snake River Correctional Institution, and request emergency medical relief, reported lower lumbar swelling and great pain.

1 **254.** Prison officials did not respond until November 20th, 2019 over a week later and
2 the response suggested that Plaintiff “continue to work with his medical Provider,”
3 defendant, Gulick.

4
5 **255.** Prison Officials response advised “rest, stretching, and antiinflammatory
6 medication as a appropriate treatment.” This medical advise was from a Non-Physician
7 Prison Official, the Prison Health Service Manager Ms. Landaverde, who works in a
8 office handling medical files, and Supervising Health Care Service.

9
10 **256.** The Non-Physicians response did not address Plaintiff request for temporary
11 medical leave, and Plaintiff lingered in acute pain and prolonged suffering, without being
12 provided treatment. **See Plaintiff Exhibit #-47**

13
14 **257.** The medical advise from the Non-Physician Prison Official, was not adequate to
15 address Plaintiff Degenerative Disc Disease, swelling in the lumbar and spinal pain,
16 which is the result of Disc Bulging, Vertebral Endplate Osteophyte Formation. This
17 requires treatment beyond “rest and stretching”, possibly surgery.

18
19 **258.** On November 11th, 2019, Plaintiff reached out to defendant, Digiulio, and
20 reported pain in lower lumbar worsening condition, swelling in spine.

1 **259.** Plaintiff continued request for Temporary Medical Leave was ignored without
2 statement or reason, violating Plaintiff Due Process Clause of the Fourteenth
3 Amendment.

4
5 **260.** Defendant, Digiulio refused to provide Plaintiff temporary leave from prison for
6 the specific purpose of obtaining medical service not otherwise available in the prison.

7
8 **261.** On November, 25th, 2019 defendants, ignored Plaintiff request for Temporary
9 Medical Leave, the request was answered by a Non-Physician Prison Official, who wrote
10 the following medical advice: “ Ibuprofen or Aspirin” were previously recommended to
11 assist in reducing discomfort.” **see Plaintiff Exhibit #-48**

12
13 **262.** Plaintiff continued to linger in a constant state of acute prolonged pain and
14 discomfort, (Plaintiff is allergic to Ibuprofen) which was recommended by a Non-
15 Physician Prison Official.

16
17 **263.** Defendant, Gulick, Hemphill, Koltas, Clements, and Digiulio proposed numerous
18 Types of cursory treatment, on paper, but did not write an order prescribing care. Several
19 stretching and meditation procedures were suggest in replace of access to outside care.

264. Plaintiff care amounted to nothing more than Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio, documenting Plaintiffs worsening condition and chronic pain.

265. Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio acted with reckless disregard for Plaintiff Health and safety, by denying Plaintiff access to Outside Care, and failing to provide Plaintiff the appropriate medical examination that his condition required, and by allowing Plaintiff to linger in a state of constant acute pain and suffering which has resulted in Plaintiff physical deterioration and worsening lumbar and spinal condition.

SECOND INJURY

Claim 5-6

266. As a result of the omissions and culpability of defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio from there individual direct and indirect involvement in denying Plaintiff Access to Medical Care, Plaintiff suffers the following permanent impairment.

PERMANENT LUMBAR COMPLICATION

267. A worsening Degenerative Disc Disease in the lower lumbar, which consist of swelling in spinal and lower lumbar.

268. Muscle Spasm, Severe sharp pain and stiffness in joints, numbness and tingling in extremities that is worsening, chronic Backache, and Pressure on spinal cord.

PERMANENT MIGRANE HEADACHES

269. Sever headaches, tense stressed feeling pain around eyes, lasting 3-hours to 3-days at a time. Sensitive to light, nausea and vomiting.

270. Habitual headaches on waking, dizziness, severe piercing or boring pain, unilateral around the eyes, occasional swollen and droopy eyelid. Sudden onsets of headaches often at night while sleeping.

FIRST CLAIMS FOR RELIEF

Claim 1-4

271. The lack of Ameliorative Mental Health Policy by Defendants, SRCI, and ODOC, amounts to Deliberate Indifference.

272. The Eighth, and Fourteenth Amendment was violated with Defendants, SRCI, Practices and Custom of systemic misdiagnosis of prisoners in there care with Mental conditions specifically using a blanket diagnosis of “Borderline Personality Disorder” on the Plaintiff with inadequate mental health assessments.

273. Defendants, SRCI, ODOC, are liable for constitutional violations caused by there vague policy on mental health assessments officially adopted by ODOC, and promulgated by its officers, staff, and agents.

274. Defendants, SRCI, ODOC are liable for its customs, and individual acts or decisions by its officers, agents, who are deemed by law as policy makers.

275. Defendants, SRCI ODOC, failure to provide adequate staff of Qualified Mental Health Professional to provide mental health care in a constitutional manner is a municipal policy or custom for which damages are also sought.

1 **276.** Defendants, Dravis, Ruthven, and Smith are individually liable under Supervisory
2 Liability for Deliberate Indifference when culpable with there individual actions, or
3 inaction direct;ly attributed to them, resulting in Plaintiff Constitutional Injury.

4
5 **277.** Defendants, Dravis, Ruthven, and Smith, Participated directly and indirectly in the
6 culpable action or inaction in there training, supervision, or control of there subordinates
7 which resulted in Plaintiff Constitutional Injury.

8
9 **278.** Defendants, Dravis Ruthven, and Smith in there acquiescence in Plaintiff
10 constitutional deprivation of which the complaint demonstrated conduct that was reckless
11 or callously indifferent to Plaintiffs Constitutional rights.

12
13 **279.** Defendants, Dravis, Ruthven, and Smith actions demonstrated personal
14 involvement in the Plaintiff constitutional deprivation of the Plaintiff resulting in Injury.

15
16 **280.** Defendants, Dravis Ruthven, and Smith actions or inaction's demonstrated
17 sufficient causal connections between there wrongful conduct as supervisors and the
18 Constitutional violation of Plaintiff.

19
20 **281.** Defendants,SRCI and ODOC at all times relevant was a municipality.

1 **282.** Plaintiffs injury involve SRCI, and ODOC enforcing a Municipal Policy, Practice
2 and custom of Deliberate Indifference promulgated by its body of officers, in violation of
3 the Eighth and Fourteenth Amendment of the United States Constitution and Eighth
4 Amendment Prohibition of Cruel and Unusual Punishment.

5
6 **283.** Defendants, Dravis, Ruthven, and Smith at all time relevant were all state actors.

7
8 **284.** Plaintiff injury involve the deprivation of the Eighth Amendment for Supervisory
9 Liability for Deliberate Indifference, by there response and knowledge of offensive
10 practices of there subordinates, and by the affirmative causal link between the supervisor
11 inaction and the Eighth Amendment Constitutional Injury suffered by the Plaintiff.

SECOND CLAIMS FOR RELIEF

Claim 5-6

285. Defendants, Gulick is individually liable for Eighth Amendment Deliberate Indifference by failing to provide a reasonable request for medical treatment and such failure exposes the Plaintiff to undue suffering or threat of tangible physical injury.

286. Defendant, Gulick is individually liable for Eighth Amendment Deliberate Indifference by intentionally refusing to provide Plaintiff medical care for Degenerative Disc Disease, and worsening condition of back and spinal pain and lumbar swelling. Neglecting to treat Plaintiff condition for a period of 4-years or since 2015.

287. Defendant, Gulick is individually liable for Eighth Amendment Deliberate Indifference by delaying necessary medical care for non-medical reason, and erecting arbitrary and burdensome ineffective medical examinations resulting in interminable delays and outright denials of medical care to plaintiff suffering for a period of 4-years or since 2015.

288. Defendant, Gulick at all times relevant was a state actor.

1 **289.** Plaintiff injury by Gulick involved the deprivation of the Eighth Amendment
2 Deliberate Indifference, applicable to the state by the Fourteenth Amendment of the
3 United States Constitution, and the Eighth Amendment Prohibition of Cruel and Unusual
4 Punishment.

5
6 **290.** Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio are individually
7 liable for denial of Plaintiff State granted access right that permits Plaintiff to obtain care
8 from non Prison medical Professional of his choice, so long as he himself and not the
9 institution bears the cost.

10
11 **291.** Defendants, Gulick, Hemphill, Koltes, Clements, and Digiulio are individually
12 liable for denial of Plaintiff State granted liberty or Property rights of prisoners entitled to
13 protection under the Due Process Cause against arbitrary state abrogation.

14
15 **292.** Defendants, Gulick Hemphill, Koltes, Clements, and Digiulio are individually
16 liable for improper denial of Plaintiffs State granted liberty or Property rights to Access to
17 Medical Care premised on the Due Process Clause of the Fourteenth Amendment of the
18 United States Constitution.

19
20 **293.** Defendants, Gulick Hemphill, Koltes, Clements, and Digiulio at all times relevant
21 were all state actors.

1 **294.** Plaintiff injury involved the deprivation of the Due Process Clause of the
2 Fourteenth Amendment to the United State Constitution, and the Eight Amendment
3 Prohibition of Cruel and Unusual Punishment.
4

5 **ISSUE OF FIRST INJUNCTIONS**

6 **Claim 1-4**

7 **295.** Order Defendants, Dravis, Ruthven, and Smith to:
8 Immediately arrange for Plaintiff to be provided an updated Comprehensive Mental
9 Health Examination by a Outside Qualified License Psychiatrist, and order that such
10 examination is conducted at SRCI, were the Plaintiff resides.
11

12 **296.** And Obtain from the license Psychiatrist an evaluation of Plaintiff Mental Health
13 Psychosis, and prescription for a course of Mental Health Treatment consistent with
14 Ameliorative Care.
15

16 **297.** Issue a Permanent Injunction, ordering Defendants, Dravis, Ruthven, and Smith,
17 prohibiting Dr. Ann Clark, Dr, Trudy Evans, and D, Jennings from Future retaliatory
18 actions regarding any participation in the development of Plaintiff Mental Health Care.
19

20 **298.** Issue a Permanent Injunction requiring SRCI, ODOC, or there agents to implement
21 a written policy providing Ameliorative Mental Health Care to Prisoners Diagnose with a
22 mental condition.
23
24

299. Issue a permanent Injunction, requiring defendants, SRCI,ODOC or there agents to implement staff training to conduct adequate Mental Health Assessment consistent with identifying a deprivation in a prisoners Ameliorative Mental Health Care and to revise there definition and policy on Mental Health Assessment.

ISSUE OF SECOND INJUNCTIONS

Claim 5-6

300. Issue an Injunction Ordering Defendants, Gulick, Hemphill, Koltes, and Digiulio
or there agents to:

Immediately arrange for Plaintiff to be examined by a Orthopedic Specialist, and obtain from that Specialist an evaluation of the conditions of Plaintiff lumbar, and prescription for a course of medical treatment that will restore and maintain the full function of Plaintiff spine, and alleviate acute suffering.

301. Immediately arrange for Plaintiffs need for a Pain Specialist, or other follow up medical treatment to be evaluated by a medical Practitioner with expertise in the Treatment of Degenerative Disc Disease.

302. Issue a Permanent Injunction requiring Defendants, Gulick, Hemphill, Koltès, Digiulio, or their agents to carry out without delay the treatment directed by an Outside Specialist or expert Practitioner.

FIRST AWARD FOR DAMAGES

Claim 1-4

303. \$50.000 jointly and severely against defendants, SRCI, ODOC, for the Physical and emotional suffering sustained as a result from failure to provide Plaintiff Ameliorative Mental Health Care, resulting in Plaintiffs physical and Constitutional Injury.

304. \$10.000, jointly and severely against defendants, Dravis Ruthven, and Smith for Failure to supervise or control there subordinates which resulted in Physical and Constitutional Injury.

SECOND AWARD FOR DAMAGES

Claim 5-6

305. \$10.000 jointly severely against Gulick, Hemphill, Koltes Clements, and Digiulio for failure to Provide Plaintiff Access to Outside Medical Care, which resulted in Physical and Constitutional Injury.

306. \$100.000, against Gulick, for failure to provide Plaintiff medical treatment for Degenerative Disc Disease, resulting in a worsening back and spinal condition, and delaying medical care for 4-years or since 2015, despite Plaintiff repeated written request for medical care, and for Plaintiff permanent impairment of Lumbar complications and Migraine Headaches, physical and Constitutional Injury.

THIRD AWARD FOR DAMAGES

Claim 1-6

307. \$100.000 Jointly against all Defendants: SRCI, ODOC, Dravis, Ruthven,
Smith, Gulick, Hemphill, Koltes, Clements, and Digiulio, for non economic damages.

ATTACHMENTS

308. Plaintiffs Exhibits Cover

309. Plaintiffs Exhibits No. 1 thru 48

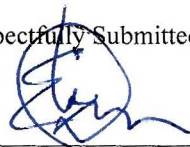
310. Appellate Judgment/ Dismissal State Habeas Petition

311. Order of Dismissal Without Prejudice/ State Habeas Petition

312. Order Granting Motion to Waive Filing Fee/ Denying State Habeas Petition

Date this 16th , day of December, 2019

Respectfully Submitted,



Date: 12/16/2019 Time: 1:28 am ☐ pm ☒

cc:


(Signature) *Pro Se Plaintiff*
Ernest L Dean #20539092
Snake River Correctional Institution
777 Stanton Blvd
Ontario, Oregon 97914

Verification of Complaint

STATE OF OREGON,)
) SS. VERIFICATION
COUNTY OF MALHEUR)

I Ernest Lee Dean, of Lawful age, being first duly sworn upon oath state:

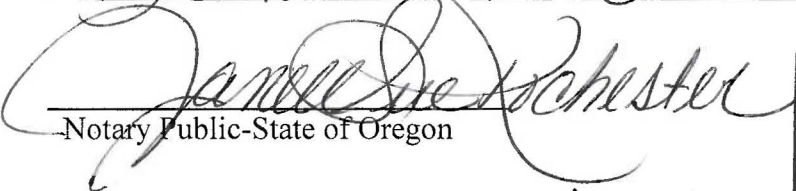
1. That I am the plaintiff in this lawsuit.
2. That I have read the complaint and am familiar with its contents.
3. That the Statements and Facts contained in the complaint are true and correct to the best of my knowledge and belief.

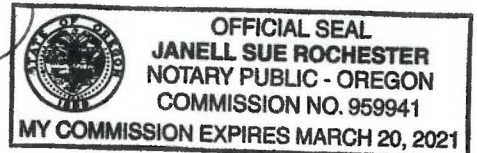


(Signature of Plaintiff)

Signed and sworn to (or affirmed) before me;

on December 17th 2019 by Ernest Dean


Notary Public-State of Oregon



My commission expires: 03/20/2021

NOTICE OF FILING AND PROOF OF SERVICE

I certify that I Ernest L. Dean, directed the original 42 USC 1983 Complaint to be filed with the Office of the Clerk of the , United states District Court Of Oregon , 10000 SW Thrid Avenue Suit 740 Portland OR. 97204 Pursuant to Fed.Rule.Civ. Proc. Rule 5.4 d, Plaintiff **Consents to Electronic Service**, as a Filing User constitutes consent to Electronic Service of all documents as provided in this General Order and in accordance with the Federal Rules of Civil Procedures

**OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
1000 SW Third Avenue Suit 740
Portland, OR 97204**

By the following method of filing:

INDICATE METHOD OF FILING

- ☒ Electronic eService
- ☐ United States Postal Service, certified or registered mail, return receipt requested
- ☐ Hand delivery.
- ☐ Other (specify):

CERTIFICATE OF SERVICE

I further certify that , upon receipt of the confirmation email stating that the document, has been accepted by the efilling system, this: **Original, 42 1983 Civil Complaint** will be served on the upon the Adverse Party, or Defendants Attorney, in compliance with electronic efilers, Policies and Procedures.

by the following method of service:

- ☒ Electronic eService
- ☐ United State Postal Service, certified or registered mail, return receipt requested.
- ☐ Hand delivery.
- ☐ No Copy Served, Until Compliant has been assigned a Civil Case Number.
- ☐ Other (specify): Party has not been served, pending a case number for this case.

Respectfully Submitted,



Date: 12/16/2019 Time: 1:28 am ☐ pm ☒

cc:

(Signature) *Pro Se Plaintiff*
Ernest L Dean #20539092
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